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Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
Room TWB-204  
445 12th Street, SW  
Washington, DC 20554

Re: Implementation of the Pay Telephone Reclassification and  
Compensation Provisions of the Telecommunications Act  
of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

On January 31, 2002, the Commission released the *Fourth Order on Reconsideration and Order on Remand* (FCC 02-22), addressing some of the issues raised by the court's remand in Illinois Public Telecommunications Ass'n v. FCC.<sup>1</sup>

Among other things, the *Fourth Recon. Order* set a new per-line compensation amount for the Interim Period, based on a per-call rate of \$0.229 and an assumed average of 148 access code and subscriber 800 calls per month, yielding a per-line total of \$33.892 per month. *Id.* at ¶¶ 10-14. The order did not determine how to allocate the per-line amount among carriers; that subject was left to a future Commission order.

Sprint petitioned for reconsideration of the *Fourth Recon. Order* for two main reasons.<sup>2</sup> First, the order's average number of compensable calls per payphone is seriously overstated because of the Commission's uncritical use of flawed, unreliable, and unweighted payphone data. Second, contrary to Illinois, the order unlawfully shifts to first-switch interexchange carriers the payphone compensation obligations of facilities-based reseller carriers. Sprint is concerned that the Commission is poised to repeat the same mistakes in the upcoming allocation order.

#### Relying on Flawed Data

On December 20, 2001, while considering how to allocate payphone compensation liability, the Wireline Competition Bureau asked the four RBOCs to

<sup>1</sup> 117 F.3d 555 (D.C. Cir. 1997), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied sub nom. Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998).

<sup>2</sup> Sprint Corporation's Petition for Reconsideration and Clarification (April 3, 2002).

provide data showing all coinless payphone call attempts, by responsible carrier, for the Interim Period and certain other calendar quarters. The RBOCs did not have such data. Instead, they provided various subjective *estimates* of completed calls to dial-around and subscriber 800 numbers. Qwest initially declined to provide a response, and Verizon cautioned that only IXC, not RBOCs, "are the ones most likely to have accurate data."<sup>3</sup>

Sprint has highlighted many of the flaws of the RBOC estimates in several ex parte meetings with Commission staff. The estimates were prepared for advocacy and litigation purposes and are inherently unreliable. Typically, RBOCs could not identify a payphone coding digit, so some non-payphone ANIs may be included. The bases for the estimates are largely unexplained, but differ among -- even within -- the RBOCs. They did not have records of call attempts but instead provided estimates of completed calls; in doing so, they could not tell whether any given call was completed, and could only guess which 800 numbers were dial-around platforms, whose calls are often incomplete and non-compensable. They apparently utilized various and largely undisclosed "timing algorithms" (per BellSouth) to guess which calls were compensable, and at least one RBOC deemed any subscriber 800 call over one second to be compensable. The scope of the estimates varies by time period, region, even type of call. Some estimates included 0+, 0-, 1+, and inmate calls, none of which are compensable. Most remarkably, the estimates are very incomplete; the majority of Interim Period data is missing.

#### Making First-Switch IXCs Responsible for FBRs

In addition to these problems, the RBOC estimates may assign to first-switch IXCs some calls that should be assigned to facilities-based resellers. Based on a review of the data, and on its familiarity with ILEC operations, Sprint believes some of the traffic ascribed to its carrier identification codes likely belongs to facilities-based resellers to which such calls were subsequently routed. Because of a lack of detailed descriptions of the methodologies the RBOCs used to fashion their estimates, it is impossible for Sprint -- or the Commission -- to ascertain the full extent of this problem. However, since fully 25% of payphone-originated traffic on Sprint's network during the Interim and Intermediate Periods belonged to facilities-based resellers, even a relatively modest allocation error would significantly overstate Sprint's total payphone compensation liability.<sup>4</sup>

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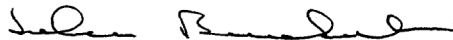
<sup>3</sup> Letter from James Hannon, Qwest, to Jeffrey Carlisle, Common Carrier Bureau (Jan. 22, 2002) at 1; Letter from Marie Breslin, Verizon, to Magalie Salas, Secretary (Jan. 22, 2002) at 1.

<sup>4</sup> Qwest's submission also warned the Bureau that "the specific IXC or reseller terminating a payphone call may or may not have a CIC," and that "[a] significant portion of the calls originating at the Qwest-owned payphones are carried on CICs other than those of the IXC or reseller terminating the call. Letter from James Hannon, Qwest, to Jeffrey Carlisle, Common Carrier Bureau (Jan. 22, 2002) at 1.

Rather than issue an allocation order based on faulty and inevitably arbitrary estimates, Sprint believes the Commission should rethink the *Fourth Order on Recon.* and resolve both the compensation and allocation issues properly. Sprint reiterates its view that the Commission should use actual IXC data from the period immediately following the Interim Period as the fairest and most accurate way to determine Interim Period compensation.<sup>5</sup> In addition, using actual data avoids the need for an arbitrary allocation of Interim Period compensation responsibility. It also avoids requiring first-switch IXCs to pay for the obligations of facilities-based resellers, which is unlawful under Illinois. The RBOC Coalition -- representing the companies that stand to receive the lion's share of compensation -- has previously endorsed this type of approach.<sup>6</sup> Moreover, unlike the *Fourth Recon. Order* and use of questionable RBOC estimates, using actual data will withstand judicial review.

If the Commission nevertheless relies on the RBOC estimates for allocating payphone compensation, it must -- at a minimum -- obtain a thorough explanation of the detailed methodologies used by the various RBOC operating units to create them. The Commission should give affected IXCs an opportunity to review and comment on those methodologies. And in fashioning any allocation based on these unreliable data, the Commission must adjust the RBOC estimates to ensure that first-switch IXCs are not assigned responsibility for traffic of facilities-based resellers.

Sincerely,



cc: Matthew Brill  
Jeffrey Carlisle  
Jordan Goldstein  
Daniel Gonzalez  
Linda Kinney  
Christopher Libertelli  
Joel Marcus  
Lynne Milne  
Lenworth Smith

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<sup>5</sup> Sprint Corporation's Petition for Reconsideration and Clarification (April 3, 2002) at 3-4. See also Reply Comments of Sprint Corp. (Oct. 30, 2000) at 3-4.

<sup>6</sup> See RBOC Coalition Petition for Reconsideration (April 3, 2002) at 3-4.